

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C.

IN THE MATTER OF

Streamlining Deployment of Small Cell  
Infrastructure by Improving Wireless Facilities  
Siting Practices

Mobilitie, LLC Petition for Declaratory Ruling

.WT Docket No. 16-421

**REPLY COMMENTS**  
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**Filed: April 7, 2017**

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## **I. CROWN CASTLE MISCHARACTERIZES THE CITY'S EFFORTS TO UPDATE ITS SMALL CELL LICENSING POLICIES**

The City of Carlsbad, California (the "City") offers these reply comments in response to the allegations contained in the Comments of Crown Castle International Corp. ("Crown Castle") dated March 8, 2017 that were submitted in response to the Public Notice dated December 22, 2016.<sup>1</sup> The City strongly objects to the false and misleading statements offered as evidence in the Commission's record, and appreciates the opportunity to set out the accurate facts.

Crown Castle falsely claims that the City "mak[es] it impractical for Crown Castle to continue operating a network" and that the City "proposed an approximately 2100% increase in baseline annual attachment fee . . . [based on] . . . the study CBRE prepared for Newport Beach."<sup>2</sup> In fact, the City (1) granted Crown Castle numerous extensions under its existing contract to continue its operations on the same terms and conditions without interruption during negotiation of a new license agreement, which is still ongoing; (2) procured an independent appraisal that specifically considered market conditions in and around Carlsbad; and (3) could not possibly have demanded such a high increase in fees even if it did rely on the independent appraiser's valuation.

### **A. City's Small Cell Licensing Background**

The City has long recognized the value of partnerships with private developers and industries. Carlsbad is home to internationally recognized companies that are industry leaders in sectors as diverse as golfing and bio- and advanced technology. These companies have a highly-educated workforce, many of which reside in the City. The City's General Plan recognizes that

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<sup>1</sup> See Comments of Crown Castle International Corp., Comment, WT Docket No. 16-421 at 11 (filed Mar. 8, 2017) [hereinafter "Crown Castle Comments"]; see also *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies*; *Mobilitie, LLC Petition for Declaratory Ruling*, Public Notice, WT Docket No. 16-421 (Dec. 22, 2016) [hereinafter "Public Notice"].

<sup>2</sup> See *id.*

“[s]uccessful partnerships with businesses will increase opportunities for local, high quality, and well-paying jobs; support cutting-edge sectors in the city; and attract emerging technologies such as green industries.” To that end, the City has permitted wireless carriers to locate and operate their facilities on city property for decades.

In 2006, the City and Crown Castle’s predecessor-in-interest, NextG Networks of California, Inc., entered into a Telecommunications License and Encroachment Agreement (the “Expired Agreement”) that authorized NextG to install wireless facilities on City-owned infrastructure in the public rights-of-way for a ten-year term. The Expired Agreement set out specific equipment configurations that would be “pre-approved” and required the licensee to pay an annual fee per installation that escalated each year. Under the Expired Agreement, NextG – and later Crown Castle – deployed about 100 installations in the City’s public rights-of-way.

In 2016, around the time the Expired Agreement would have expired on its own terms, the City began to consider ways in which it could improve its practices and make its infrastructure more available to the other entities that had begun to express an interest in the City’s poles. In particular, the City decided to standardize its contract forms for wireless attachments to City-owned poles in the public rights-of-way so that the same terms and conditions would be available to all potential licensees, and so that the negotiation process would be streamlined to the extent possible. On a conceptual level, such a “master license” would set out the basic terms and conditions for obtaining a license to use a particular pole. The City has since been working cooperatively with all wireless stakeholders to develop this standardized master license.

**B. The City Has Accommodated Crown Castle's Continued Network Operations by Granting Numerous Extensions to the Existing License Agreement on Similar Terms**

Throughout the entire time that the City has been working cooperatively with the wireless industry to update its licensing requirements, the City has granted Crown Castle multiple extensions under the Expired Agreement (on the same terms and conditions) to ensure those facilities remain on-air. Despite the City's good faith, Crown Castle has inexplicably delayed the negotiation process for more than eight months.

The bullet points below summarize the events that transpired since the City first informed Crown Castle that it would be updating its small cell policies:

- On August 4, 2016, the City and Crown Castle met for the first time to discuss a new master license agreement. Less than 60 days later, the City provided Crown Castle with a draft master license for consideration.
- Between August 5, 2016, and September 25, 2016, the City and Crown Castle exchanged numerous emails regarding status of the draft master license. Crown Castle never provided the City with any revisions to the draft master license agreement in this timeframe.
- On September 26, 2016, prior to the City releasing the draft master license to Crown Castle, Crown Castle tentatively agreed to allow that the City use four strands of fiber optic cable at each licensed pole location.
- On October 25, 2016, the City Council approved the Fourth Amendment to the existing license agreement that extended the license to January 31, 2017.
- On October 28, 2016, Crown Castle responded to the City's draft master license with a counteroffer. Less than 30 days later, on November 17, 2016, the City responded to Crown Castle's revisions.
- On November 30, 2016, Crown Castle indicated that it was still reviewing the City's response to Crown Castle's counteroffer. In that response, Crown Castle identified the pole license fee as a major issue. To date, this is the last substantive draft master license negotiation communication from Crown Castle to the City.
- On January 24, 2017, the City Council approved the Fifth Amendment to the existing license agreement that extended the license to April 30, 2017.

- To date, the City has not received any substantive response to the draft master license agreement provided to Crown Castle on November 17, 2016.

Not only has the City made it practical to continue operating in the short term, but the City has also been a diligent and responsive party in the ongoing negotiations for a new long-term agreement. Moreover, to the extent that Crown Castle ultimately declines to agree to the same terms and conditions the City offers to all other similarly-situated entities, Crown Castle has ample other opportunities under California law to relocate its facilities to other poles or to construct its own poles in the public rights-of-way. Any doubt as to whether Crown Castle will be able to continue to operate its network stems solely from Crown Castle's refusal to engage with the City.

**C. The City Retained an Independent Appraisal to Specifically Evaluate Attachments to City-Owed Poles in Carlsbad**

Contrary to Crown Castle's claims that the City relied on an appraisal produced for Newport Beach, California, the City commissioned an appraisal specifically for its own poles from a professional with past experience valuing wireless facilities for both public agencies and wireless industry members, which includes Crown Castle. Although the same appraiser performed a similar service for Newport Beach, and although the two beach-side communities may share some similarities, the City's appraisal was unique to Carlsbad.

**D. Crown Castle's Pricing Allegations are Mathematically Impossible**

Crown Castle's claim that the City demanded a 2,100% increase in license fees is patently false. Under the Expired Agreement, Crown Castle currently pays approximately \$1,140 per pole, per year. Although the City's appraisal valued the attachments at approximately \$10,800 per pole, per year, the City never demanded that Crown Castle pay that amount, and is

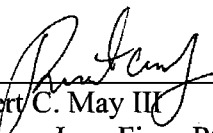
currently offering to license poles to Crown Castle for significantly less. Accordingly, the Commission should reject Crown Castle's wild accusation as plainly false.

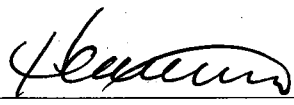
## II. CONCLUSION

Crown Castle's patently false and misleading accusations should be as troubling to the Commission as they are to the City. The Commission should reject Crown Castle's characterizations and closely scrutinize whether Crown Castle has made similarly false or misleading statements elsewhere in these proceedings.

Respectfully submitted,

Dated: April 7, 2017

  
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